

No. 83-871

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

O. S. FOSTER, Sheriff of Roanoke County Virginia, and
ROBERT N. LANDON, Director, Virginia Department of
Corrections,

Petitioners,

—v.—

CHARLES LANKFORD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES | ii |
| REASONS WHY THE WRIT SHOULD BE DENIED. . | 1 |
| CONCLUSION | 5 |

TABLE OF AUTHORITIES

| <u>Cases</u> | <u>Page</u> |
|---|-------------|
| <u>Marzullo v. Maryland</u> , 561 F.2d 540 . . . (4th Cir. 1977) | 2,3 |
| <u>McMann v. Richardson</u> , 397 U.S. 759 . . . (1970) | 2,4 |
| <u>Other</u> | |
| Supreme Court Rules, Rule 17.1 | 2 |

In the
Supreme Court of the United States
October Term, 1983

O. S. FOSTER, Sheriff of Roanoke County,
Virginia, and ROBERT N. LANDON, Director,
Virginia, Department of Corrections,

Petitioners,

v.

CHARLES LANKFORD,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

REASONS WHY THE WRIT SHOULD BE DENIED

Under the Rules of this Court,
there are two traditional reasons for the
granting of a petition for writ of
certiorari to a federal court of appeals:
(1) the decision of the court below is in

conflict with the decision of another court of appeals on the same matter; (2) the case presents an important question of federal law which has not been, but should be, settled by this Court. Rule 17.1, Supreme Court Rules. Neither reason is presented in this case. The petition for writ of certiorari does not argue to the contrary. In fact, the petition does not even allude to either of those reasons as a basis for granting the writ.

The court below found that Lankford had been denied the effective assistance of counsel. In reaching that conclusion, the court applied a standard first articulated by this Court in McMann v. Richardson 397 U.S. 759 (1970) and later adopted by the Fourth Circuit in Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977), namely, was defense counsel's representation "within the

range of competence demanded of attorneys in criminal cases." App. 57. That standard, in one variation or another, has now commanded general acceptance by the circuit courts.

Petitioners do not argue that the Marzullo standard is, as a matter of constitutional interpretation, incorrect. Rather, they argue only that the standard has been misapplied to the facts of this case. Pet. at 7. However, misapplication of a standard widely accepted by the lower federal courts surely presents no issue warranting plenary review by this Court.

Even if it were appropriate for this Court to review a case merely because a concededly proper standard has been misapplied to the facts, this would not be an appropriate case for review. The unanimous conclusion of the court below that

Lankford had been denied effective assistance of counsel -- a conclusion reached after a thorough analysis of the prosecution's case and defense counsel's efforts to present a response -- is amply supported by the record. Assuming, as this Court said in McMann, that the Sixth Amendment requires reasonable competence of criminal defense counsel, it is apparent that Lankford received a constitutionally inadequate defense. As a result of the shortcomings in Lankford's defense that are described in the opinion of the court of appeals, he was "left defenseless." App. 62.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: New York, New York
February 8, 1984